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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re

ENRIQUEZ LOPEZ,

On Habeas Corpus.

F065000

(Stanislaus Super. Ct. No. 192940)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus.

Tim Bazar, Public Defender, and Saul Garcia, Deputy Public Defender, for petitioner.

No appearance for Real Party in Interest.

-ooOoo-

Petitioner seeks leave to file a belated notice of appeal.

On April 20, 2011, a jury found petitioner guilty of one count of first degree murder (Pen. Code, § 187, subd. (a)), a gun enhancement (Pen. Code, § 12022.53, subd. (d)), and one count of being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)).

*Before Hill, P.J., Kane, J., and Detjen, J.

On May 16, 2011, the court sentenced petitioner to state prison for a total term of 52 years to life. On that same date, petitioner instructed appointed counsel to file a notice of appeal on his behalf. Counsel agreed to do so and prepared the notice of appeal for his clerk to file forthwith. Trial counsel was unaware that the notice of appeal was either not filed by his office or lost by the superior court until late October 2011. Counsel's attempts to perfect an untimely appeal were unsuccessful and the instant petition for writ of mandate followed. This court issued an order granting the Attorney General leave to file an informal response to the petition for writ of mandate. The order provided: "The Attorney General is granted leave to file, within 20 days of this order, a response to the petition for writ of habeas corpus. The failure to respond will be construed as the Attorney General's agreement that appropriate relief may issue without further proceedings. (*People v. Romero* (1994) 8 Cal.4th 728.)" The Attorney General declined to file a response.

This court deems the "Petition for Writ of Mandate," filed on June 5, 2012, to be a "Petition for Writ of Habeas Corpus" and grants the same.

A notice of appeal must be filed within 60 days of the date of the rendition of the judgment. (Pen. Code, § 1237.5; Cal. Rules of Court, rules 8.304, 8.308.) Although a criminal defendant has the burden of timely filing a notice of appeal, the burden may be delegated to trial counsel. (*In re Fountain* (1977) 74 Cal.App.3d 715, 719.) "A criminal defendant seeking relief from his default in failing to file a timely notice of appeal is entitled to such relief, absent waiver or estoppel due to delay, if he made a timely request of his trial attorney to file a notice of appeal, thereby placing the attorney under a duty to file it, instruct the defendant how to file it, or secure other counsel for him [citation]; or if the attorney made a timely promise to file a notice of appeal, thereby invoking reasonable reliance on the part of the defendant [citation]." (*People v. Sanchez* (1969) 1 Cal.3d 496, 500.)

DISPOSITION

Petitioner is entitled to relief. Petitioner is granted leave to file a notice of appeal on or before July 30, 2012, in Stanislaus County Superior Court case No. 192940.

Let a writ of habeas corpus issue directing the Clerk of the Stanislaus County Superior Court, if the Clerk receives the request and the notice of appeal on or before July 30, 2012, to file the notice of appeal, to treat the notice of appeal as being timely filed, and to process the notice of appeal in accordance with the applicable rules of the California Rules of Court.